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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,153	09/23/2003	Mark C. Nicely	14522-004001	2854
26181	7590	05/26/2005	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			BROCKETTI, JULIE K	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/670,153	Applicant(s) NICELY ET AL.	
	Examiner Julie K. Brockett	Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4-4-05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21, 22 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 states “A computer program product, stored on a computer-readable medium, for including gaming systems having different progressive payout parameters into the same progressive jackpot, comprising instructions...” It is unclear how “gaming systems having different progressive payouts” are included on a computer program product. This part of the preamble is unclear. A computer program product is merely software stored on a memory device. Therefore, it cannot include systems involving large physical structures. The Examiner suggests placing “for including gaming systems having different progressive payout parameters into the same progressive jackpot” after “comprising instructions” which would make the claim clear, that only instructions are provided on the computer readable medium.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 8-20 and 24-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Torango, U.S. Patent Application Publication No.

2003/0060279 A1. Torango discloses a system for managing a progressive jackpot. A progressive management device includes an interface (See Torango Fig. 1, item 111). A progressive engine is used for maintaining a progressive (See Torango Fig. 2). The progressive management device is coupled by the interface to a first gaming system and a second gaming system (See Torango Fig. 1). The first gaming system includes a first set of progressive payout parameters and the second gaming system includes a second set of progressive payout parameters that is different from the first set of progressive payout parameters (See Torango Figs. 1, 3, 10109-10110) [claims 1, 21, 23]. For example, a player may win the progressive jackpot by playing bingo, or the player may win the jackpot by playing keno. Each of these two games has different parameters that need to be met in order to win the progressive jackpot. The progressive management device is operable to, in response to

receiving a wager amount, calculate a percentage of the wager amount to be applied to the progressive jackpot such that a product of a wager amount necessary to participate in a progressive jackpot, an odds of winning the progressive jackpot and the percentage of the wager amount to be applied to the progressive jackpot is equal for the first and second gaming system (See Torango ¶0100-¶0102, Fig. 7) [claims 1]. The progressive management device further comprises an analysis engine operable to examine a plurality of gaming systems and progressive payout parameters and an integrator operable to integrate progressive games having different progressive payout parameters into a single progressive jackpot (See Torango ¶0109-¶0110, ¶0115, ¶0122) [claims 2, 10, 22]. The progressive management device is coupled to the gaming systems through a network (See Torango Figure 1) [claim 3]. The system displayed in Figure 1 can be considered a network since it ties various computers and devices together. The progressive management device includes a currency conversion device for converting data provided from one of the gaming systems into a predetermined currency (See Torango ¶0124-¶0125) [claim 4]. The progressive management device is operable to provide information on the progressive game to user gaming interfaces, wherein the information includes the value of the progressive jackpot (See Torango Definitions "Event Data") [claim 6]. The progressive is reset when a user attains a progressive (See Torango ¶0132) [claims 8]. Torango further discloses a method for including systems having different progressive payout parameters into the

same progressive jackpot. A progressive game is initiated (See Torango ¶0066). A first gaming system and a second gaming system are provided to participate in a progressive jackpot (See Torango Fig. 1). The first gaming system has a first set of progressive payout parameters and the second gaming system has a second set of progressive payout parameters that is different from the first set of payout parameters (See Torango Fig. 1, ¶0052). A percentage of the wager amount to be applied by each gaming machine to the progressive is calculated in response to a received wager amount. The calculation is based on the first and second sets of progressive payout parameters (See Torango ¶0100-¶0102) [claim 9]. The percentage of the wager amount to be applied to each gaming system is selected/adjusted such that the product of progressive payout parameters of the wager amount necessary to participate in the progressive jackpot, the odds of winning the progressive jackpot, and the percentage of the wager amount to be applied to the progressive jackpot are equal for each gaming system (See Torango Fig. 7, ¶0100-¶0102) [claims 9, 11, 14, 15, 19, 21, 23]. The progressive payout parameters include game odds (See Torango Fig. 7) [claim 12]. The progressive payout parameter includes a currency type (See Torango ¶0129) [claim 13]. The system further includes a progressive management device coupled to a gaming server. The gaming server including two or more gaming stations, wherein one of the gaming stations includes a first set of progressive payout parameters and a second station includes a second set of progressive payout parameters that is different from the first set

of progressive payout parameters (See Torango Fig. 1, 3; ¶0049-¶0054) [claim 14].

A server is a shared computer on the local area network and may be used as the gatekeeper for controlling data. As seen in Figure 1, the system can be considered to have a game server, item 102. Torango further discloses a method for including gaming systems having different currency types to a progressive. Input is received from one or more gaming servers seeking participation in a progressive jackpot. The characteristics of each gaming system are analyzed including the currency type of the gaming system. The currency type of each gaming system is converted into a standard currency (See Torango ¶0129). One or more gaming systems are included in the progressive jackpot by adjusting the percentage of a wager amount applied to the progressive jackpot for each gaming system such that a product of a wager amount to participate in a progressive jackpot, an odds of winning the progressive jackpot, and a percentage of the wager amount to be applied to the progressive jackpot is equal to a constant (See Torango ¶0100-¶0102; Fig. 7). For each received wager amount, a source of the gaming system of the received wager amount is identified, a percentage of the received wager amount to apply to the progressive jackpot is selected and the percentage of the wager amount is applied to the progressive jackpot (See Torango ¶0123) [claim 15].

Furthermore, Torango discloses a method for validating progressive payout parameters in gaming systems participating in a progressive jackpot. The progressive parameters of the gaming system are validated including verifying

that game odds and a payoff are consistent and within predetermined criteria and including validated gaming systems in the progressive jackpot (See Torango ¶0100-¶0102) [claim 16]. The system includes a plurality of gaming systems including a first and second gaming server (See Torango, Fig. 1 items 103A-C can be considered servers). A progressive management server is coupled through a network to the first gaming server and the second gaming server, the first gaming server belongs to a first enterprise and the second gaming server belongs to a second enterprise. Each enterprise of the first and second enterprises include one or more gaming systems being coupled to one of the first or the second gaming servers (See Torango Fig. 1) [claim 17]. The gaming systems have different progressive payout parameters (See Torango Fig. 1) [claim 18]. A method for determining a progressive outcome is disclosed. Data is received at a progressive management device concerning a wager amount placed by a user of a participating gaming system. The percentage of the wager to be applied to a progressive jackpot is determined in response to the received data based on progressive payout parameters analysis. The progressive payout parameters including game odds and wager amounts (See Torango ¶0100-¶0102). The progressive jackpot is incremented by the selected percentage of the wager amount (See Torango ¶0100-¶0102). A random number generator calculation is executed using the odds from the gaming system progressive payout parameters. The results of the random number generator calculation are transmitted to a participating gaming system (See Torango

¶0090) [claims 19, 23]. A percentage of a wager to be applied to a progressive jackpot is determined through retrieval of previous analysis results from a database (See Torango ¶0100-¶0102) [claim 20]. Torango uses a computer program product stored on a computer readable medium to execute the aforementioned steps on a programmable processor (See Torango ¶0052) [claims 21 & 23]. A first component is operable to identify a source gaming system associated with a received wager amount. A second component is operable to select a percentage of the received wager amount to apply to the progressive jackpot and to apply the selected percentage of the wager amount to the progressive jackpot (See Torango Fig. 7; ¶0053-¶0055, ¶0061, ¶00808-0089) [claims 24, 26]. Calculating a percentage of a wager amount to be applied to the progressive jackpot for each received wager amount includes identifying a source gaming system of the received wager amount, selecting a percentage of the received wager amount to apply to the progressive jackpot and applying the percentage of the wager amount to the progressive jackpot (See Torango Fig. 7; ¶0100-¶0102) [claims 25, 27-29].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable
over Torango '279 in view of Torango, U.S. Patent No. 6,241,608 B1.**

Torango '279 lacks in disclosing that the currency conversion is performed in real-time. Torango '608 teaches that the currency conversion is performed in real-time (See Torango '608 col. 18 lines 52-54) [claim 5]. For example, the conversion is performed with the updated currency exchange rates. It would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the currency exchange rates of Torango '279 in real time so that accurate exchange rates are used. By using accurate up to the minute exchange rates, the players and the casino benefit from using the correct rates so that no one is disadvantaged by using invalid rates.

**Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable
over Torango in view of Kelly et al., U.S. Patent No. 6,454,648 B1.**

Torango lacks in disclosing that the information is provided to the user gaming interfaces in real-time. Kelly teaches of a progressive game system in which information is provided to the user gaming interfaces in real-time (See Kelly col. 15 lines 58-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the information in real-time in the invention of Torango. By providing the information in real-time, the player is aware of the current status of the game and can then wager accordingly.

Furthermore, the player is kept updated as to the current jackpot value, which may interest the player in continuing to play the game.

Response to Amendment

It has been noted that claims 1, 2, 9, 14, 15, 19, 21 and 23 have been amended. New claims 24-29 have been added.

Response to Arguments

Applicant's arguments filed April 4, 2005 have been fully considered but they are not persuasive.

Applicant argues that claims 21-22 are not indefinite under 35 U.S.C. 112 since the preamble of claim 21 does not state that systems are contained within the computer program product, instead, the computer program product includes instructions that allow gaming systems having different progressive payouts to be included within the same progressive jackpot. The Examiner agrees that is what Applicant's invention actually is; however, that is not how the preamble is phrased. To better phrase the preamble, the Examiner suggested wording in the rejection above.

Applicant argues that Torango '279 modifies the odds of winning the progressive jackpot for each gaming system and only discloses a modification of game odds and does not disclose or suggest adjusting a percentage of a wager amount applied to the progressive jackpot. The Examiner disagrees. For each

gaming machine in Torango, the percentage of a wager amount to be applied to the progressive jackpot is calculated/adjusted. See Torango Figure 7, column B. For example, not every machine has the same contribution amount; they are calculated to be different for the different machines and wagers.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., adding gaming systems with fixed odds into the same progressive) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that Torango does not disclose or suggest a gaming management device that, in response to receiving a wager amount, calculates a percentage of a wager amount to be applied to a progressive jackpot such that the product of the progressive payout parameters of a wager amount necessary to participate in the progressive jackpot, the odds of winning the progressive jackpot, and the percentage of the wager amount to be applied to the progressive jackpot is equal for each participating gaming system as recited in claim 1. The Examiner respectfully disagrees and notes that these limitations are clearly shown in Figure 7. For example, when a player wagers on a game, the gaming machine calculates what percentage of the wager is to be applied to the progressive jackpot (See Fig. 7 col. B), it determines the

appropriate percentage to be applied. The product of the progressive payout parameters of a wager amount necessary to participate in the progressive jackpot (See Fig. 7, col. A), the odds of winning the progressive jackpot (See Fig. 7 col. D), and the percentage of the wager amount to be applied to the progressive jackpot (See Fig. 7 col. B) is equal for each participating gaming system (See Fig. 7 col. E).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

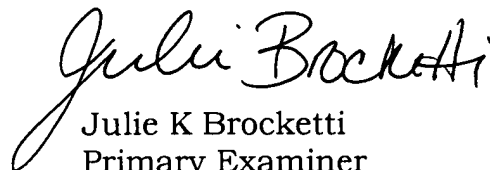
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K. Brockett whose telephone

number is 571-272-4432. The examiner can normally be reached on M-Th
8:00-5:00.

The fax phone number for the organization where this application or
proceeding is assigned is 703-872-9306.

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9197 (toll-free).


Julie K Brockett
Primary Examiner
Art Unit 3713